

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2389 OF 2006

Krishna Kalidasrao Kulkarni
vs.
The Ld.Registrar General,
High Court Bombay & ors.

Petitioner

Respondents

Mr.Anilkumar Joshi for the petitioner.

Mr.A.A.Kumbhakoni, Associate Advocate General with
Mr.K.R.Belosay, Government Pleader for the respondents.

**CORAM : F.I.REBELLO &
ANOOP V. MOHTA,JJ.**

DATED : 13th October, 2006

P.C.

The petitioner was denied an appointment to the post of Civil Judge (Junior Division) & Judicial Magistrate (First Class) (for short, "CJJD & JMFC") by the High Court, Bombay and it was so informed by a communication dated 13th July, 2006 by respondent no.2-Government of Maharashtra through its Joint Secretary which was based on a communication/letter dated 6th June, 2006 issued by the Registrar General, High Court, Bombay to respondent no.2. Therefore the present writ petition with a prayer to quash and set aside the said communication and direction to the respondents to appoint the petitioner to the post and with all consequential benefits.

2. The petitioner is the youngest son of his father who

has a leading legal practice at Tuljapur. As contended, the petitioner has brilliant academic record. Some time in the year 1997 the petitioner has started a proprietary business in the name and style of Sai Systems and Services. The petitioner, some time in July 2001, joined Law College as he developed keen interest in law. His computer business was looked after by a Manager. A false and bogus criminal case was lodged against the petitioner on 26th February 2002, being Summary Criminal Case No.1082/2002 under Section 292(1), (2) (a) (c) of Indian Penal Code (IPC). The petitioner was not present on the spot at the time of detection of the said crime.

3. Respondent no.3-Maharashtra Public Service Commission (MPSC) published an advertisement on 25th February, 2005 for the post in question. The petitioner applied for the said post and disclosed in column no.23 (a) & (b) of the application form and also furnished information about the criminal case pending against him on the date of the application.

4. By an order dated 25th July 2005 the Judicial Magistrate (First Class) of Osmanabad acquitted the petitioner in the aforesaid case. The said acquittal order remained unchallenged and therefore became final.

5. The petitioner was called for an oral interview on

30th November 2005 by the Selection Committee. On 20th December, 2005 respondent no.3 informed to the petitioner that his name was recommended for the post as he obtained total 141 marks i.e. 125 marks in written test and 16 marks in oral interview. The petitioner stood 28th in the merit list of the selected 250 candidates. On 21st December, 2005 as the petitioner's name was recommended to respondent no.2 for the post, he was asked to submit the attestation form. The petitioner submitted the same on 2nd January, 2006 with details in connection with the criminal case in question. The petitioner was medically examined on 31st March, 2006 and was found fit to join the Government service in the cadre of Class II. The favourable character verification certificate dated 28th March 2006 was also furnished by the Superintendent of Police, Osmanabad.

6. The petitioner received a letter dated 13th July, 2006 issued by respondent no.2 that respondent no.1 had declined the appointment to the said post. As alleged, no reasons were recorded or communicated to the petitioner while denying him the appointment. On 18th August, 2006 the petitioner has therefore filed the present writ petition.

7. Respondent no.1 vide affidavit dated 12th October, 2006 resisted the prayers made in the writ petition.

8. Admittedly the High Court has by its communication dated 6th/12th June, 2006 informed respondent no.2 that the High Court not considered the names of the petitioner and one Mr.C.M.Mane, fit for the appointment to the post of CJJ & JMFC. Based on this communication, respondent no.2 had informed the petitioner about the non-consideration of his name for the appointment to the said post. The communication sent by the High Court through Registrar General though not provided with any reasons, still the material available before the Selection Committee/High Court as reflected in the affidavit in reply filed on 12th October, 2006 itself is sufficient to decline him the appointment to the said post basically, when the petitioner had full knowledge of the summary case no.1082/2002 which was pending on 25th February, 2005, when he applied for the said post. The order of acquittal dated 25th July, 2005 passed by the learned Magistrate mainly on the ground that the complainant PSI Aghav was not examined by the prosecution and therefore, the accused-petitioner herein got the benefit of doubt.

9. The learned advocate appearing for the petitioner has relied on the case of **Pawan Kumar v. State of Haryana & anr., AIR 1996 SC 3300** wherein, the Apex Court has set aside the termination of the appellant as he was convicted upon a plea of guilt for the offence under

section 294 of IPC. The facts are totally distinct and distinguishable. In the present case, the petitioner sought appointment to the post of judicial officer i.e. CJD & JMFC. The High Court, after considering the merit of the matter, rejected the claim of the petitioner for the said post. The totality of the situation and material available on record if taken note of by respondent no.1, we see no reason to interfere with the said order.

10. The learned advocate for the petitioner has further relied on the case of **Commissioner of Police, Delhi & anr. v. Dhaval Singh, (1999)1 SCC 246**. In that case, the concerned authorities did not apply its mind to the intimation given by the appellant about the criminal case against him and his candidature was cancelled. The Apex Court has set aside the same on the ground of principle of natural justice and non-application of mind to the relevant material. There is a material difference between the case in hand on facts, as well as, circumstances. In the instant case, respondent no.1 has considered the merit of the order of acquittal passed on the foundation of benefit of doubt and accordingly declined to appoint him to the post of judicial officer.

11. Mr.A.A.Kumbhakoni, the learned Associate Advocate General has relied on various authorities in support of

his submission to oppose the prayers made by the petitioner in the writ petition. Apparently, the authorities cited on behalf of the petitioner nowhere deal with the case in hand. We are concerned with the order passed by the respondents of declining the appointment of the petitioner to the post of judicial officer. The power of the Chief Justice and other Judges of High Court to decline the appointment to the post of judicial officer, under the facts & circumstances of the present case, cannot be subjected to judicial review. The power and duty of High Court as contemplated under Article 235 to maintain purity in the subordinate judiciary is an important facet which cannot be overlooked while dealing with the submissions raised by the petitioner.

12. The submissions as raised by the learned Associate Advocate General has substance and needs to be accepted apart from the reasoning on the merit of the matter as observed in other paras.

13. Taking all this into account the present writ petition is therefore dismissed in limine. No costs.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA,J.)